STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

CIVIL RIGHTS 1823 14TH STREET SACRAMENTO, CA 95811 PHONE (916) 324-1700 FAX (916) 324-1949 TTY 711





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July 6, 2009

To: Office of the Secretary

United States Department of Transportation

Re: Docket ID Number OST-2009

Advance Notice of Proposed Rulemaking

Pursuant to the United States Department of Transportation (DOT) request for comment on the advance notice of proposed rulemaking for the DOT Disadvantaged Business Enterprise Program, the California Department of Transportation submits the attached comments and suggestions. The matters of interest include:

- Counting Credit for Items Obtained by DBEs from Non-DBE Sources
- Contract Unbundling
- Revised DBE Certification Application
- Personal Net Worth Statement
- Program Oversight
- Facilitating Interstate Certification
- Terminations for Convenience and Substitution

If you have any questions on the comments and suggestions provided, please contact me at (916) 324-0990, or by email at Olivia Fonseca@dot.ca.gov.

Sincerely,

OLIVIA FONSECA

Deputy Director

Civil Rights

Attachments

Matter of Interest: Counting Credit for Items Obtained by DBEs from Non-DBE Sources Section 26.55(a) (1)

These caveats would provide flexibility to the recipients, would not undermine the spirit of the DBE regulations, and would allow the DBE to claim qualification for obtaining higher amount contracts.					
Proposal: apply the "good faith effort" principle to the exception if: The DBE can buy supplies/ materials for less from the prime. There are no, or few, suppliers in the area. An obligation to purchase from the prime is not a part of the contract between the prime and the DBE. The contract between the two is based on a fixed cost, or that the DBE applies a markup to the product purchased from the prime.	Neutral	Continued competitive inequities between prime contractors if a prime owns a commodity, such as the asphalt plant example. Burdensome and complex. Could result in a myriad of challenges in interpreting the regulations and applying them correctly.	No new regulations regulations Possibly ensures fair competition between contractors	Suggestion 1: No change. Leave the language of section 26.55(a) (1) as it is. Suggestion 2: Leave the basic structure of section 26.55(a) (1) intact. However, permit recipients to make exceptions based on criteria stated in an amendment to the rule. The exceptions would allow counting of items provided by a prime contractor to its DBE subcontractor under limited circumstances.	Section 26.55(a) (1) provides as follows: (a) When a DBE participates in a contract, you [i.e., the recipient] count only the value of work actually performed by the DBE toward the DBE goals. (1) Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
Additional Comments	Support	Negative Impact	Positive Impact	What is the proposed change?	What is the current rule or process?

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Matter of Interest: Counting Credit for Items Obtained by DBEs from Non-DBE Sources Section 26.55(a) (1)

What is the current rule or process?	What is the proposed change?	Positive Impact	Negative Impact	Support	Additional Comments
The Office of Business & Economic Opportunity does not count DBE credit for items obtained by DBE subcontractors from other sources, particularly the prime contractor for whom they are working for on a contract.	Suggestion 3: Amend the rule to permit items obtained by DBEs for a contract to be counted for DBE credit regardless of their non-DBE source.	Would increase the department's participation numbers. Resolves inconsistency in interpreting the regulations.	N/A	Yes	ANPRM states that this would be "good for DBEs" as they could list higher dollar projects on their resumes. Recognizes DBEs for 100 percent risk of sub bid or prime contract.
	Suggestion 4: Amend the rule to prohibit items obtained by DBE from any non-DBE source to be counted for DBE credit.	Removes inconsistency in regulations by prohibiting certain actions	Would lower participation overall	N 0	Does not consider the risk the DBE takes for using non-DBE suppliers/services to perform work.

Matter of Interest: Contract Unbundling Section 26.51(b) (1)

What is the current rule or process?	What is the proposed change?	Positive Impact	Negative Impact	Support	Additional Comments
Unbundling contracts is cited in	Suggestion 1: Add to Part	Smaller contracts are		Yes; to	Propose: Amend the
the DOT DBE regulation (section	26 a requirement that	vital to providing and		suggestions	current regulations to
26.51 (b) (1)) as one of the race-	recipients' DBE programs	promoting more work		1 through 4	include contract
neutral measures that recipients	include specific policies and	and contract			unbundling.
can take to help meet overall	procedures to unbundle	opportunities for small			
DBE goals.	contracts of a certain size	businesses. Other			Propose: Change
i	that are subject to DBE	states that advocate			specific language
"Unbundling" means to break up	program requirements.	the "contract			requirements in Part
large contracts into smaller		unbundling" practice			26 to set aside all
pieces that small businesses will		include Illinois,			goods and service
find it easier to compete for and		Oregon, Florida, and			contracts of \$250,000
perform, as well as structuring	Suggestion 2: In all	Maryland.			or less, and all
contracting requirements to ease	design-build contracts, or				construction contracts
competition for small firms.	other types of large	Other benefits of			of up to \$500,000 for
	contracts involving a master	having smaller			small businesses.
DOT is seeking comment on	or central prime contractor,	contracts include			-
what steps—beyond using its	there would be requirements	increased small			Propose: Provide
bully pulpit to advocate greater	that the prime contractor	business			incentive credit (e.g.
use of the technique—the DOT	ensure that some	participation,			5%), similar to
might take to foster unbundling.	subcontracts are structured	diversification,			Disabled Veterans
	to facilitate small business	ensuring equal			Business Enterprise
	participation.	opportunity for all			credit, if a prime
		small businesses, job			contractor breaks
		creation and retention			down a large contract
		for small businesses,			and awards to small
		and accommodate			business or DBE.
		smaller bonding			
		capacity.			
			:		

Matter of Interest: Contract Unbundling Section 26.51(b) (1)

		What is the current rule or process?
Suggestion 4: When a recipient has a significant race-neutral component of its overall goal, the recipient would be required to ensure that some portion of the contracts that it issues are sized to facilitate small business participation.	Suggestion 3: When a recipient is letting a race-neutral contract (that is, one without a DBE contract goal), the terms of the solicitation would call on the prime contractor to provide for enough small subcontracts to make it possible for small businesses, including DBEs, to participate more readily.	What is the proposed change?
		Positive Impact
	:	Negative Impact
		Support
·	It is easier to unbundle projects at the contractor level than at the recipient level. Contractors can unbundle by task and by components of tasks.	Additional Comments

Submitted by the California Department of Transportation, Office of Business & Economic Opportunity

Matter of Interest: Contract Unbundling Section 26.51(b) (1)

		What is the current rule or process?
Suggestion 6: Implement unbundling procedures and criteria as outlined in the Federal Acquisition Regulations. (See attached)	Suggestion 5: Recipients would, as an element in their DBE programs, procedures to facilitate cooperation among small and disadvantaged businesses to enable them to better compete for larger contracts (e.g., formation of joint ventures among DBEs).	What is the proposed change?
Requires justification substantiated by cost analysis as to why a contract cannot be unbundled.	Potentially encourages more DBE and small businesses in to becoming prime contractors together.	Positive Impact
Creates increased administrative overhead costs in terms of additional staff, time, and resources.	Creates increased administrative overhead costs in terms of additional staff, time, and resources. It would be expected that recipients may have to settle disputes amongst the joint venture parties.	Negative Impact
Z _o	No	Support
Project unbundling is done at the district level within Caltrans. There are approval processes in place to ensure projects that can be unbundled are.		Additional Comments

FEDERAL ACQUISITION REGULATIONS

Subpart 7.1—Acquisition Plans

7.107 Additional requirements for acquisitions involving bundling.

- (a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(e)(2)). Market research may indicate that bundling is necessary and justified if an agency or the Government would derive measurably substantial benefits (see 10.001(a)(2)(iv) and (a)(3)(vi)).
- (b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—
- (1) Ten percent of the estimated contract or order value (including options) if the value is \$86 million or less; or
- (2) Five percent of the estimated contract or order value (including options) or \$8.6 million, whichever is greater, if the value exceeds \$86 million.
- (c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—
- (1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and
 - (2) The acquisition strategy provides for maximum practicable participation by small business concerns.
- (d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the bundled requirements.
- (e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—
 - (1) Identify the specific benefits anticipated to be derived from bundling;
- (2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;
- (3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;
- (4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;
- (5) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and
- (6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.
 - (f) The contracting officer must justify bundling in acquisition strategy documentation.
- (g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.
- (h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

Matter of Interest: Revised DBE Certification Application Section 26.83(c) (7)

additional information.	ž 2.	Under § 26.83(c)(7) of the Regulation, firms applying for DBE certification must use the uniform certification application form provided in Appendix F without change or revision. The application is intended	What is the current rule or Y process?
Suggestion 3: Revise question 4 (found in Section 3, Part B), to include, not only an owner's 'familial relations to other owners', but also an owner's familial relationship to other employees at the firm.	Suggestion 2: Revise questions 11 and 12 (found in Section 4 "Control") to include more details concerning the owners' outside employment or other business dealings to include a description of the time spent at these operations and an explanation of how these activities do not conflict with their ability to manage the applicant firm.	Suggestion 1: Adding an applicant's date of birth to help determine a proper value for retirement assets under § 26.67(a) (2) (iii) (D).	What is the proposed change?
Provides potential insight as to who may have financed the operation or controls key aspects of the firm's work.	Will help determine who at the firm controls each activity for which the firm is seeking certification. Should eliminate "absent" owners.	N/A	Positive Impact
NA	N/A	Potential for age discrimination	Negative Impact
∀es	Yes	No	Support
	Propose: Create a standard resume that asks for hours worked, dates of employment, and business dealings.	Caltrans disagrees with adding an applicant's date of birth.	Additional Comments

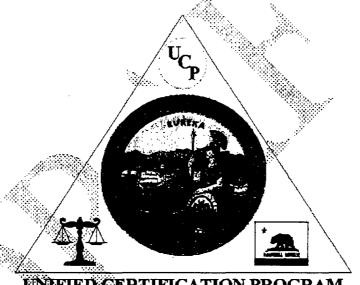
Matter of Interest: Revised DBE Certification Application Section 26.83(c) (7)

	What is the current rule or process?
Suggestion 4: Adding NAICS codes to the existing entry requesting a description of the firm's primary activities. Suggestion 5: Submit ways to shorten or simplify the application form that would continue to give UCPs sufficient information to make informed decisions about firms' eligibility.	What is the proposed change?
Requires the firm to select their primary activities based on the codes and makes it easier for recipients to determine certification approval. Incorporating the proposed changes will provide a more comprehensive understanding of the business structure and operation of the applicant firm to adequately assess an applicant's eligibility. Firms have indicated they are deterred from applying for DBE certification due to the length and complexity of the application package; this will assist in addressing that.	Positive Impact
N/A	Negative Impact
Yes Yes	Support
Propose: As to not add to the length of the application, it is recommended to include the NAICS website, rather than attach the list of codes. Caltrans agrees that the application package is too long and complex. Propose: A draft sample of the application form is attached. All the DBE certifying agencies in California use a Supplemental Document Checklist. It requests information on all of the firm's office locations in the State and what counties the firm is able to perform its work.	Additional Comments

CALIFORNIA UNIFIED **CERTIFICATION PROGRAM** (CUCP)

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

CERTIFICATION APPLICATION



UNIFIED CERTIFICATION PROGRAM

To access the statewide CUCP DBE database, please log onto: WWW.CALIFORNIAUCP.COM

Send application to:

For



CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION APPLICATION

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Sole-Proprietor	Limited Liability C	orp. 🔲 Limite	ed Liability Partnersh	dir 🔲	Other (describe):		
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1) Legal and Busines	s Name of Firm:	2) Contact N	Jame:) FUTUS);	ellaphone No.:	4) Firm ra	IX NO.:
5) E-mail Address:			6) Website:	T4.			
7) Principal Place of I	Business:	Address	City	- -20.	County	Sinte (20)	Zip Code
8) Mailing Address of	Firm (if different):	Address	City		County	. Slate	Zip Cado
9) Is your firm "for pr	ofit?"	Yes No	11.5.0F 1.5.0F	kolatala siv Gebooled	الله المالية المالية الله الله الله الله الله الله الله الل	il then you co All out the ag	Alex get days
10) Is your firm curren [If yes, check appropriate	box(e3).]	\$\langle \text{Triffe}	2 <u>7</u>	DBE	☐ SBA 8(a)		SBD
If you checked DBE, a the following:	Inswer Name of state	and certifying ager	ncy:	4	Has your firm an on-site vis		conducted No
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 This firm was estal Method of acquisit 			4) I/we have ow	nea this	Tirm since:		
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6) Number of entiploy		liffe	Part-time		TOTAL _		
7) Specify the gross (Year	To:	al receipts \$ tal receipts \$ tal receipts \$		• -
8) Has your firm evel	existed under differe	nt ownership, a	different type of o	wnership	, or a different	name: 🔲	Yes 🗌 No
either paid or unp	ers officers, board of aid. If you answered ' w these activities do i	'Yes," please sta	ite who and descri	ibe the ti	ne spent at the	ese	Yes 🗌 No
10) Is this firm co-loca		ness locations, o	r does it share a to	elephone	number, P.O.	Box, zation	Yes □ No
11) At present, or at ar a) been a subsidiary b) consisted of a par c) owned any percen d) had any subsidiar	of any other firm? thership in which one or tage of any other firm? iles?	rmore of the partne					Yes No No Yes No No Yes No
12) If you answered "Y (attach extra sheets if need		stions in 8 – 11, ;	provide the applica	able info	rmation below	for each "Y	es" answer
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		<u>_</u>					
Do any of your imme If you answered "Ye					company?		☐ Yes ☐ No
Name	Relationship		Compar	19	Type of	Business	Own or Manage
ction 3: Backgroudentify all individuals				nership inter	est in your fi	rm. providing the inf	ormation requeste
List all individuals o	r holding com	panies				<u>g: 78.</u> k. <u></u>	
with ownership inter	rest in this firm	1: -	a)	Name		Title	Percentage Ow
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Permanent Resident:				Other (specify):			
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What is the Persona Statement form at the end?	al Net Worth (P	NW) of	the owner(s)	applying for I	DBE qualific	ation? (Use and attach th	e Personal Financial
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Has any trust been of the Has any trust been			of this disad	vantaged ow	ner(s)?	Yes	□ No
	16.40 (A. S.)	327					
ction 4: Control dentify your firm's Of	ficers and Bos	rd of Di	rectors (if addit	ional space is req	uired, attach a se	parate sheet):	
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C. Indicate your firm's in	entory in the follower	lowing ca	tegories (attach	additional s	heets If nee	ded):	
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1) Equipment					<u> </u>		Yes (**
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3) Office Storage/Space	1,00000 1000000 10000000		George				
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D. Management Function	ns/Payroll						
Does your firm rely on any	other firm for mana	igement fo	inctions or emplo	yee payrol	17	☐ Yes [☐ No
If yes, explain:	1900-2004 - 1900-2004 - 1900-2004	V					
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E. Financial information							
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F. Identify all sources, a	mounts and min	mese of	money leaned t	a value fier	n includia	ng the names of s	ny neronna or firma
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			Name of Pe	rson	Origina		Purpose of Loan

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years

		Trans	sferred	Tran	sferred		Date of
Contribution/Asset	Dollar Value	From	Whom	To	Whom	Relationship	Transfer
)							
2)		 					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.)

Name of License/Permit Holder	Type of License/Permit Expiration Date	License Number and State
1)		
2)		

I. List the two largest contracts completed by your firm in the past three years, if any, and the two largest inher.

jobs:		84.X		100 miles 100 miles	
Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Completion Date	Dollar Value of Contract
1)					
2)					
3)				•	
4)			157		

Section 5: Office/Work Locations

List all office loca	ations in your home state and	any other state you o	onduct business:		
	Address		City	Stain	Zip Code
a)					
b)					
List all counties	where you are able to perform	1 your work (attach addition	onal sheets if needed - so	ee attached list for reference);
		<u> </u>			
		<u> </u>			

	· · · · · · · · · · · · · · · · · · ·	·			

Section 6: NAICS Codes

Firms must identify North American Industry Classification Systems (NAICS) Codes based on its area of expertise. For a list of NAICS codes, assistance in locating appropriate NAICS codes and determining if your firm meets U.S. Small Business

tance,	e that size standards are subject to change at a , please contact one of the certifying agencies	any time by the SBA.	
e indi	cate below areas of expertise that you prefer t	o perform in order of i	mportance.
ics c	ode Description of Work/Service	NAICS Code	Description of Work/Service
	DBE CERTIFICATION APPLICATION	N SUPPORTING DO	CUMENTS CHECKLIST
You !	MUST attach copies of all of the following docume	onte se they early to wor	and verify from
	Decumentation of Group Membership. Please com disadvantaged status on the basis of Ethnic member Passport, Green Card, parents' birth certificate, etcommunity affiliation; 2) for each owner seeking so document evidencing gender (e.g., birth certificate	ership, please provide a co.) evidencing Ethnic heri ocial disadvantaged statu o, drier license, etc.); 3) fo	document (e.g., birth certificate; U.S. tage or similar document evidencing Ethnic is on the basis of Gender, please provide a
1 - 10 1 - 10	of social disadvantage, please provide documents Documentation of U.S. Chizenship or Lawful Perm		
A II.	Documentation of U.S. Chizenship or Lawful Perm		
	Documentation of U.S. Citizenship or Lawful Perm Applicants Work experience resumes (that include places of	anent Realdence (e.g., U	S. birth certificate, Green Card, etc.)
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Both sides of all corporate stock certificates and your firm's stock transfer ledger
 Shareholders' Agreement
 Minutes of stockholders and board of directors meetings
 Corporate by-laws and any amendments
 Corporate bank resolution and bank signature cards
 Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

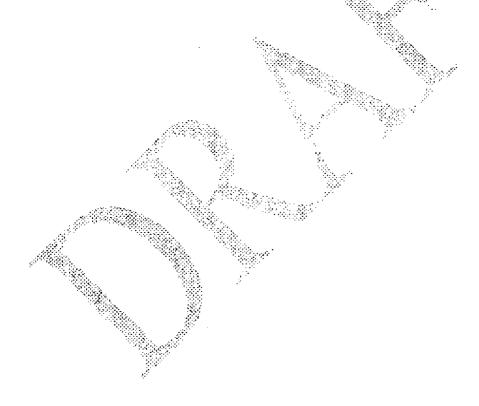
Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- ☐ List of distribution equipment owned and/or leased

Page Holder

For

Affidavit of Certification



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For

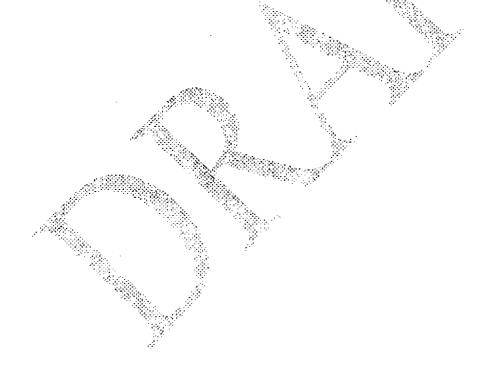
Application Instructions

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For

Personal Financial Statement (PFS)

Page Holder For PFS Instructions



For

Certifying Agency
Roster

Matter of Interest: Personal Net Worth (PNW) Statement Section 26.67 a (2)

What is the current rule or process?	What is the proposed change?	Positive Impact	Negative Impact	Support	Additional Comments
The current certification application allows applicants to submit their own version of a	Suggestion 1: Amend Part 26 to specify in	Additional supporting documents will provide	Seeking additional information may give the	Yes	It would be more beneficial for UCP to
personal net worth statement, or use SBA	greater detail what types of information	greater insight into	application form a		institute its own
Form 413 - most commonly used.	lattachments should be	history in order to	intrusive and burdensome,		appropriate
Section 26.67a(2) (i) You must require each	included on an	determine social and	thus a further deterrent to		instructions about
individual owner of a firm applying to	applicant's Personal Net Worth (PNW)	disadvantage.	applicant.		additional
to participate as a DBE airport	statement.		Despite additional		form.
concessionaire) whose ownership and		Clear instructions on	requirements, applicants		
control are relied upon for DBE certification	(1) Additional	completion and	may still not submit all		Propose: See
worth that does not exceed \$750 000	applicants/ recipients		additional document		form including
(ii) You must require each individual who	that all assets are	Many firms are	letters, thereby delaying		Instructions that
makes this certification to support it with a	relevant in determining	reluctant to sign the	process - or closure of file		additional
signed, notarized statement of personal net	PNW	SBA PFS form as It has	for non-cooperation.		documents may be
worth, with appropriate supporting	(2) Requesting owners	verbidge concerning			requested/ obtained
documentation must not be underly lengthy	to explain purchase of	could eliminate that.	needed can be obtained		state can inscribe its
burdensome, or intrusive.	new assets from		from an individual's		own logo on these
(iii) In determining an individual's net worth,	dividends/capital gains		personal state and federal		forms. This example
you must observe the following requirements:	to renect on PNVV.		tax returns. Information on W-2 real estate dividend		has the CUCP logo.
in the applicant firm; (B) Exclude the	(3) Seeking financial		capital gains, to name a		It may be
individual's equity in his or her primary	documents not		few, is reflected on the		appropriate to list the
residence (except any portion of such equity	PANA but may relevant		1040.		requirements under
that is attributable to excessive withdrawals	for determination such				Question and
from the applicant firm). (C) Do not use a	as a W-2				Answers on DBE
net worth.	2 44 1.				then be used by
(D) With respect to assets held in vested					recipients as a
pension plans, Individual Retirement					guide.
accounts, 40 (A) accounts, or origin					

Matter of Interest: Personal Net Worth (PNW) Statement Section 26.67 a (2)

Recipients have to make an overall assessment of an applicant's personal finance to determine whether a person is economically disadvantaged. As per guidance provided on Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage. (The guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104). (A) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.	retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time Applicants currently submit SBA Form 413 which is part of the UCP application packet.	What is the current rule or process?
Suggestion 2: Amend the rules to best apply and describe the economic disadvantage concept.		What is the proposed change?
Would provide clarity and consistency.		Positive Impact
This is a subjective issue, and may appear to be targeting certain individuals.		Negative Impact
Yes		Support
Callrans agrees that some sort of guidance is necessary, but does not have a recommendation. Propose: Institute an On-line Forum moderated by UCP - see Attachment 2.		Additional Comments

DISADVANTAGED BUSINESS ENTERPRISE

	A.	
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CAMBOLD 4:1	PRITTY ICALIS	Y PROUNT VY

PERSO	NAL FINA	NCIAL STA	TEMENT			
CHAINED CHAINER THOUSE AND				As of		.,
Complete this form for disadv disadvantage owners holding	antaged owi	ner claiming 5 e ownership a	1% or more nd control o	of the business ap	plying for DBL	centification.
Name(s);				Indicate if these figur	es for a married	couple, YesNo
Residence Address;				Residence Phone:		
City, State, & Zip Code;				A A A A A A A A A A A A A A A A A A A		
Business Name of Applicant:				Business Phone:		
ASSETS	(Omit	Cents)		LIABILITIES	- 45 A B B	(Omit Cents)
Cash on hand & in Banks	\$		Accounts P	ayable	s _	
Savings/Other Cash Accounts	\$		Notes Paya	ble to Banks and Other ibe in Section 2)		43.5
IRA or Other Retirement Accounts	,\$ <u> </u>		'	Account (Auto)		
Accounts & Notes Receivable			To be not the			
Life insurance-Cash Surrender Value Only . (Complete Section 7)		1		Account (Other)		
Stocks and Bonds	,,\$			on Real Estate	_	
Real Estate(Describe in Section 3)	\$		(Desci	ribe in Section 3)		
Automobile-Present Value	\$		(Desci	ribe in Section 5)	Ψ	
Other Personal Property(Describe In Section 4)	\$		Other Liabil (Desc	lities ribe in Section 6)	\$_	
Other Assets	•		Total	delegaria	\$_	
(Describe in Section 4)			Net Worl	th	\$	ı
Total	\$			otal Liabilities from		
Section 1. Source of Income			Contingen	t Liabilities		
Salary	\$		As Endorse	er or Co-Maker	\$,	
Net Investment Income	100		Legal Clain	alnemebul & an	\$	
Real Estate Income			Provision for	or Federal Income Tax	c\$.	
Other Income (Describe below)			Other Spec	cial Debt	\$	
You may be requested to provide copies of			ents, and othe	r related documents to	verify your sour	ce of income.
Description of Office Income in Section 1.						
"Alithony or child support payments need not be o		r income" unless it	is desired to hav	e auch payments counter	d toward total incom	1è.
Section 2. Notes Payable to Banks and (Others. (Use atta	achments if necess:	ary. Each attachr	nent must be identified as	s a part of this state	ment and signed.)
Name and Address of Note holder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)		ed or Endorsed of Collateral
					•	_
		-				

Section 3. Real Estate Owned.	(List each parcel separately, Ident must be identified as a part of this	ify primary Residence. Use attack statement and signed.)	nment if necessary. Each attachment
	Property A	Property B	Property C
Type of Property (e.g. residential, condo, timeshare, commercial, etc.)			
Address (Include street, city, state and Zip)			
Date Purchased			
Original Cost			<u>Ass</u>
Present Market Value			
Name & Address of Mortgage Holder		(X)	
Mortgage Balance			
Amount of Payment per Month/Year			
Second Mortgage Balance			
Amount of Payment per Month/Year	/4		
Section 4. Other Personal Property and	Other Assets. (Describe, and if	any is pledged as security, state n syment and if delinquent, describe	ame and address of lien holder, amount
Section 5. Unpaid Taxes. (Describe in	n detail, as to type, to whom payable	e, when due, amount, and to what	property, if any, a tax lien attaches.)
Section 6. Other Liabilities. (Describe in	licteh i		· · · · · · · · · · · · · · · · · · ·
Section 7. Life Insurance Held. (Give fa	ce amount and cash surrender valu	e of policies - name of insurance of	company and beneficiaries)
I certify under penalty of perjury that the	above statements are true and a	accurate as of the stated date(s)	. These statements are made for the
purpose of becoming eligible for certific certifying agency to make inquirles as ne	ation as a Disadvantaged Busines	s Enterprise under that Unified	Certification Program, I authorize the
Signature;		Oate:	
Signature:		Date:	

Instructions to Assist in Completing the **Personal Financial Statement** for the California Unified Certification Program



Please do not make adjustments to your figures pursuant to U.S. Department of Transportation (U.S. DOT) regulations 49 CFR Part 26. The agency that you apply to will use the information provided on your completed Personal Financial Statement to determine your Personal Net Worth according to 49 CFR Part 26. An individual's Personal Net Worth according to 49 CFR Part 26 includes only his or her own share of assets held jointly or as community property with the individual's spouse and excludes the following:

· Individual's ownership interest in the applicant firm:

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- Individual's equity in his or her primary residence;
- · Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

If your Personal Net Worth according to 49 CFR Part 26 exceeds the \$750,000 cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE certification. If the Personal Net Worth according to 49 CFR Part 26 of the majority owner(s) exceeds the \$750,000 cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies. Furthermore, the certifying agency may require additional information or proof to determine your claim of social and economic disadvantage. For example, proof that you have been denied credit because of your race, inability to obtain licenses, .

General Instructions

- You must fill out all line items on the Personal Financial Statement to the best of your ability.
- If necessary, use additional sheet(s) of paper to report all information and details.
- If you have any questions about completing this form, please contact one of the certifying agencies on the Roster of Certifying Agencies.
- You may be asked to provide additional supporting documents for verification.

Specific instructions

DATE AND CONTACT INFORMATION

Be sure to include the date in the upper right corner of the first page and your contact information. Indicate whether the figures reported are for a married couple.

ASSETS
All assets must be reported at their current air market values as of the date of your statement. Assessor's assessed value for real estate, for example, is not acceptable assets held in a trus generally should be included.

Cash on hand & in Banks: Enter the total amount of each on-hand and in bank accounts other than savings.

Savings Accounts: Enter the total amount in all savings accounts.

IRA or other Retirement Account: Enter the total present value (deduct tax and early withdrawal penalties, if applicable) of all IRAs and other retirement accounts liquiding any deferred compensation and pension plans.

Accounts & Notes Receivable: Enterprestotal value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if any

Life Insurance-Cash Surrender Value Only Enter the value of any life insurance polices. This amount should be cash surrender value only, not the amount a benefician would receive upon your death, also known as face value. A complete description is required in Section 7.

Stocks and Bonds: Enter the current market value of your stocks and bonds.

Real Estate: Enter the current fair market value of all real estate owned. A complete listing and description of all real estate owned is required in Section 3. The amount must correspond with the total "Present Market Value" amounts listed in Section 3.

Automobile-Present Value: Enter the current fair market value of all automobiles owned.

Other Personal Property: Enter the current fair market value of all other personal property owned, but not included in the previous entries. A complete description of these assets is required in Section 4.

Other Assets: Enter the current fair market value of all other assets owned, but not included in the previous entries. A complete description of these assets is required in Section 4.

LIABILITIES

Accounts Payable: Enter the total value of all unpaid accounts payable that is your responsibility.

Notes Payable to Bank and Others: Enter the total amount due on all notes payable to banks and others. This should not, however, include any mortgage balances. A complete description of all notes payable to banks and others is required in Section 2.

Installment Account (Auto): Enter amount of the present balance of the debt that you owe for auto installment account. Please be sure to indicate the total monthly payment in the space provided.

Installment Account (Other): Enter amount of the present balance of the debt that you owe for other installment account. Please be sure to indicate the total monthly payment in the space provided. For example, include the balances of all credit card debts in this line. Personal Financial Statement Instructions UCP DBE Program Page 2

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies.

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate. A complete breakdown of all mortgages on real estate is required in Section 3. The amount must correspond with the total of the mortgage balances amounts listed in Section 3.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. A complete description is required in Section 5.

Other Liabilities: Enter the total value due on all other liabilities not classified in the previous entries. A complete description is required in Section 6.

Net Worth: To compute Net Worth, add all liabilities and put that figure in the Total Liabilities line. Then subtract Total Liabilities from Total Assets to get your Net Worth. To check your figures, add Total Liabilities and Net Worth and the sum must equal Total Assets. If your figures do not match, your form will be returned to you to correct and complete again.

CONTINGENT LIABILITIES

Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

As Endorser or Co-Maker: Enter the total potential liabilities due as a result officering a co-signer for a loan or other commitments.

Legal Claims and Judgments: Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

Provisions for Federal Income Tax: Enter the total amount of all federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt: Enter the total amount due on all remaining potential debts not accounted for.

SECTION 1. SEPARATE COMMUNITY PROPERTY

Identify all property that is not held jointly or as community property, include values, ownership, and a brief explanation why the property is not held jointly

SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, payment amount, frequency, and how secured for each note payable as entered in the "Liabilities" column. Do not include loans for your business or mortgages for your properties.

SECTION 3 REAL ESTATE OWNED

Starting with your primary residence (be suffer identify it as your primary residence), enter the type of property, address, date of purchase, original cost, present fair marketival de name and address of hist mortgage holder(or second if held), mortgage account number, mortgage balance, amount of paying it. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial playedies, etc.

Total "Present Market Value" amounts should correspond with the "Real Estate" amount listed in the "Assets" column. Additionally, total "Mortgage Balance" amounts should correspond with the "Mortgage Balance" amount listed in the "Liabilities" column. Attach additional sheets if needed.

SECTION 4. OTHER PERSONAL PROPERTY AND OTHER ASSETS

Itemize and describe in detail other personal property and other assets owned as listed in the "Assets" column. For other personal property, include boats, trailers, jewelry, furniture, household goods, collectibles, clothing, etc. For other assets, include equity interest in other businessessinglests, investments, etc.

SECTION 5. UNPAID TAXES

Describe in detail as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpartaxes listed in the liabilities column. If none, state "NONE." This section should not include the contingent tax liabilities or anticipated taxes are for the current year. For any unusually large amounts, you must include documentation, such as tax liens, to support the amounts.

SECTION 6. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "Liabilities" column. If none, state "NONE," For any unusually large amounts include documentation, such as bills, to support the amounts.

SECTION 7. LIFE INSURANCE HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company and beneficiaries and cash surrender values of the policies.

EXECUTION OF STATEMENT

Be sure to sign and date at the end of the statement.

Attachment 2

Personal Net Worth Proposed On-line Forum moderated by UCP

Benefit:

Will enable recipients to ask questions on actual files on hand with various situations and get feedback from subject matter experts (USDOT), or other receipts in various states. A collection of several examples with common threads can then be posted as Q&A guidance in Appendix E for future reference.

Other areas for discussion:

- Appendix E. Economically Disadvantaged B (1), provides guidance on how to
 determine economic disadvantage. A more clear explanation is necessary on how
 applicants should be asked to <u>"describe the conditions which are the basis for
 the claim"</u>, and expand on what is considered to be <u>"diminished capital and
 credit opportunity".</u>
- Amend the language of § 26.67 (2) (iii) (B) from: "Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm)"; to "Exclude the individual's primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm)."

The effect of this would be that neither the value of the asset, nor liability will get listed on PFS. At this time (although no empirical evidence is available), anecdotal evidence suggests that more applicants are getting below the \$750,000 cap when recipients exclude equity in their assessment of PNW. As DOT demonstrates in their example where an individual has a \$1m home with no debt, the practice is to subtract the \$1m from the net assets, i.e. subtract Total Liabilities from Total Assets, then subtract value of equity form net assets. Example:

Total Assets: \$1.5m

Total Liabilities: <\$0.150m>
Net Assets: \$1.35m

Exclude equity: <\$1.0m>

Net PNW: \$0.35m

If in this example, the individual were not to list his home value in the PFS as an asset, there will not be a \$1m adjustment in the net worth, making the applicant over PNW size standard.

 Suggestion - Have a tiered Personal Net Worth cap, taking into consideration demographic and socio-economic constructs of individual states. For example, New York will have a higher cap compared to Arkansas, and so forth.

Matter of Interest: Program Oversight

The two stated objectives of the DBE program are to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts and to ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs. Combating DBE fraud has become a major emphasis area for the Department's Office of the Inspector General. DOT believes fraud prevention begins at the state and local levels.	What is the issue?
Suggestion: Amend the regulation to require recipients to take a more hands-on approach to overseeing the program. Areas suggested by DOT for amendment: 1. Conflicts of interest within a recipient's certification unit or UCP. 2. General standards and guidance for reviewing their DBE program 3. The independence and competence of certifiers in the process. 4. Objective and impartial judgment on all issues associated with the DBE program.	What is the proposed change?
Standardizes what would be required of all recipients thus increasing the integrity of the program.	Positive Impact
Resource intensive for state DOTs.	Negative Impact
Neutral - Recipient programs should be evaluated on case-bycase bases to determine what requirements are needed for their program.	Support
It is implied that state DOTs do not take a hands-on approach with their DBE program; (1) that fraud is being committed by DBE certifications being approved where a conflict of interest; (2) that certifiers are incompetent; and (3) that fraud is prevalent among DBEs and primes. Propose: States do not have sufficient resources to both administer and audit their programs effectively. DOT should allocate funds, commensurate with the size of each state's transportation construction program, to allow the hiring of independent auditors to, at least, spot audit both primes and DBEs. Specific areas to include: good faith effort, DBE data/ information, and DBE usage.	Additional Comments

Matter of Interest: Facilitating Interstate Certification Section 26.81(e) and (f)

Interstate reciprocity is authorized under Part 26 (see section 26.81(e) and (f)). However, certification proceeds on a state-by-state basis, with each state's UCP operating independently. To encourage facilitating interstate certification, the Department issued a Question & Answer in 2008 to provide more guidance.	What is the current rule or process?
Suggestion 1: Require an update of each on-site review report at certain intervals, such as every three or five years.	What is the proposed change?
A firm's circumstances may change and the UCP can ensure the DBE applicant is still in control of the company.	Positive Impact
• The CUCP has over 4000 certified firms in the database covering a geographic area of 163,707 square miles. Reports reveal there are over 2.1 million small businesses in California. The resources and time it would take to update on sites will be an extreme hardship. • Increases the burden on the home state where the applicant is certified. • Quality of on-sites conducted may vary from state to state • Out-of-state travel is not easily approved in California.	Negative Impact
So	Support
Under §26.83(c) (1), you [certifying agency] must perform an onsite visit to the offices of the firm. You must interview the principle officers of the firm and review their resumes and/or work histories. You must also perform an onsite visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation. You may rely upon the site visits of any other recipient with respect to a firm applying for certification. Caltrans, a member of the CUCP, does not conduct on sites out of state, but will accept the onsite report of other states UCP.	Additional Comments

Submitted by the California Department of Transportation, Certification Unit

Matter of Interest: Facilitating Interstate Certification Section 26.81(e) and (f)

	<u> </u>	
	·	What is the current rule or process?
Suggestion 3: A nationwide reciprocity or federalizing certification, such as having a unitary certification system operated by DOT.	Suggestion 2: Provide a regulatory requirement so that DBEs do not have to provide duplicative certification application packages to each state. The requirement would also include the formation of a regional certification consortium to discuss concerns, approaches to issues, conduct training, and for other purposes.	What is the proposed change?
 Provides a uniform expectation and implementation. Increases the number of qualified applicants to the DBE program. Facilitates DBE certification confirmations. 	 Reduces the burden on firms which are certified as DBEs in their home state. Increases the number of qualified applicants to the DBE program. Members of the consortia would address issues and implement their certification program as agreed by all. 	Positive Impact
 As noted in the proposal, significant resources would be needed by DOT; and it could also result in less local "on the ground" knowledge of the circumstances of applicant firms. May take longer for DBE certification. 	 Information supplied by the home state may not be current or may require updating by applicant. Additional notary, certifying the validity of the information provided by the home state, will be needed from applicant. Age and quality of on-sites conducted may vary from state to state. Quality of certification between states may vary. 	Negalive Impact
Yes	Yes	Support
May violate the Ninth Circuit court ruling with respect to the determination of the "market area" and "narrow tailoring". One underutilized DBE in one market area might not be such in another. Unless a state has included other states or specific areas therein, in its own market area via a Disparity Study, DBE credit should not be claimed.	Propose: See Attached	Additional Comments

Attachment

Facilitating Interstate Certification Process Proposal

The following is a proposed process for reciprocity:

- 1. Firm submits an application along with a current DBE certificate from its home state (State A) to request DBE status in Caltrans.
- 2. Caltrans contacts State A to request a copy of the firm's certification package along with the on-site report.
 - ⇒ Note: On-site report must be current (within one year), otherwise a new on-site may be requested by Caltrans.
- 3. State A receives the certification package and on-site reports and submits a copy of requested documents to Caltrans within 30 days.
- 4. Caltrans reviews the documents from State A and contacts applicant to verify information and request financial information along with any additional documentations.
- 5. Caltrans reviews the overall information and recommends firm for certification or denial.
- 6. Caltrans certifies or denies and notifies firm of decision.

Matter of Interest: Terminations for Convenience and Substitution Section 26. 53(f) (1) and (2)

Construction Policy Bulletin (CPB 09-03) There are some terms that would need to be clarified regarding the change order work. For example: a) What is considered significant? b) What would be used as the basis for approval/non-approval? Currently, the use of DBEs to meet the raceneutral goal is suggested/encouraged, but is not required.	No; More definitive information is needed to determine the specifics of how this would be applied. See comments column. Yes; This would be the best opportunity to standardize the process for use of DBE's while at the same time protecting DBEs from being substituted for no valid reason.	Contractors and recipients may incur increased contract costs if the DBE increases its price to perform the additional work. This could result in prime contractors not listing the raceneutral DBE on a contract so that they would not have to go through the substitution process.	Increased participation on behalf of existing DBE's. Could increase the State's participation through the increased DBE contract participation. Standardized process for DBE utilization on all projects. Greater protection for all DBEs.	DBE. Establish criteria for approving the substitutions. Suggestion 2: Require recipients to approve prime contractor's decision not to give significant portion of change order work to existing DBE's. Suggestion 3: Apply raceneutral DBE substitution measures to contracts.	DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your [the recipient] prior written consent. Under section 26.53(f) (2). When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you [the recipient] must require the prime contractor to make good faith efforts to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.
 See Attachment 1— "Authorized Replacement of UDBEs" 	Yes; Policies and forms currently used by Caltrans are attached for consideration by US	None	Caltrans already has a substitution process in place for all listed DBE's-	Suggestion 1: Require the prime contractor to make good faith efforts to substitute for the original	Currently, section 26.53(f)(1) tells recipients to
Additional Comments	Support	Negative Impact	Positive Impact	What is the proposed change?	What is the current rule or process?

Submitted by the California Department of Transportation, Labor Compliance

Attachment 1

Authorized Replacement of Underutilized Disadvantaged Business Enterprise (UDBE)

Underutilized Disadvantaged Business Enterprise (UDBE) firms must perform work or supply materials as listed in the Caltrans Bidder - UDBE - Commitment form specified under Section 2, "Bidding," of the special provisions. Do not terminate a UDBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Department.

The Department grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

- 1. Listed UDBE fails or refuses to execute a written contract based on plans and specifications for the project.
- 2. You stipulate a bond is a condition of executing the subcontract and the listed UDBE fails to meet your bond requirements.
- 3. Work requires a contractor's license and listed UDBE does not have a valid license under Contractors License Law.
- 4. Listed UDBE fails or refuses to perform the work or furnish the listed materials.
- 5. Listed UDBEs work is unsatisfactory and not in compliance with the contract.
- 6. Listed UDBE delays or disrupts the progress of the work.
- 7. Listed UDBE becomes bankrupt or insolvent.

If a listed UDBE subcontractor is terminated, you must make good faith efforts to find another UDBE subcontractor to substitute for the original UDBE. The substitute UDBE must perform at least the same amount of work as the original UDBE under the contract to the extent needed to meet the UDBE goal. The substitute UDBE must be certified as a DBE at the time of request for substitution. The Department does not pay for work or material unless it is performed or supplied by the listed UDBE.



Construction Policy Bulletin

CPB 09-3 Race-Conscious/Race-Neutral Disadvantaged Business Enterprise Program

References: Construction Manual

Construction Manual

9163241949

Code of Federal Regulations

Section 8-301C, "Substitution Process" Title 49, Part 26, "Participation by Disadvantaged

Business Enterprises in Department of

Section 8-3, "Disadvantaged Business"

Transportation Financial Assistance Programs"

Section 2-1.02B, "UDBE Commitment Submittal" Contract Special Provisions Section 5-1.086, "Performance of UDBEs" Contract Special Provisions

Effective Date: April 2, 2009

Approved:

Chief

Division of Construction

Approval Date: April 1, 2009

Background

The Department of Transportation (Caltrans) encourages the use of Disadvantaged Business Enterprise (DBE) contractors on its federal-aid contracts. Before May 2006, Caltrans maintained a wholly race-conscious DBE program in which specific DBE contract goals were established as a condition of contract award. A 2005 Ninth Circuit Court of Appeals decision (Western States Paving Co. vs. Washington State Department of Transportation) required documentary evidence of discrimination in the transportation contracting industry as a condition of implementing a raceconscious DBE program. In May 2006, as a result of the decision, Caltrans implemented a wholly race-neutral DBE program that does not establish specific DBE goals as a condition of contract award. The race-neutral DBE program supports all small businesses.

Caltrans conducted a study of the use of available DBEs on its transportation projects in an effort to establish whether disparity existed in the use of one or more particular DBE type over another. The study indicated that four specific groups in the DBE community were not obtaining work in proportion to their availability. These groups are defined as underutilized disadvantaged businesses or UDBEs. A UDBE is a firm that meets the definition of a DBE as specified in Title 49 Code of Federal Regulations. Part 26 (49CFR26) and is in one of the following underutilized disadvantaged groups: Black American, Asian-Pacific American, Women, and Native American. To encourage the use of the four targeted groups, Caltrans applied for and received approval from the Federal Highway Administration and the U.S. Department of Transportation for a mixed component, race-conscious and race-neutral, DBE program. The statewide 2008/2009 goal for Caltrans is a total of 13.5 percent of which 6.75 percent will be for race-conscious UDBE participation and 6.75 percent will be for race-neutral DBE participation. Caltrans' goal can change yearly, while the proportion between race-conscious and race-neutral can change throughout the year.

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Effective February 27, 2009, Caltrans implemented the race-conscious component of the DBE program. Federal-aid contracts will now contain varying percentages of UDBE participation goals that successful bidders will be required to meet or, alternatively, perform a good-faith effort to meet as a condition of award of the contract. Only UDBEs will count toward the contract participation goal.

Under the race-neutral component of the program, Caltrans will continue to encourage the use of DBEs on its projects. Caltrans will not set race-neutral DBE contract goals, but all DBEs used on the project will be counted toward the statewide participation goal.

Existing Procedure

Under the race-neutral DBE program, contracts do not include a DBE commitment goal, although there is a 10 percent aspirational goal. Successful bidders are required to submit the "CALTRANS Bidder—DBE Information" form when returning the approved contract. Proof of a good faith effort is not required if a prime contractor does not use a DBE. When a DBE is used, a separate substitution process is not required. Contractors must submit form CEM-2402(F), "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors," and form CEM-2403(F), "Disadvantaged Business Enterprises (DBE) Certification Status Change," on all contracts with DBE participation. To be counted for participation, all DBEs used on projects must perform a commercially useful function.

New Procedure

Construction Policy Directive 06-5 is rescinded, and Construction Policy Bulletin 06-7 is revised and replaced in its entirety by this CPB 09-3.

For all federal-aid contracts, bidders will be required to submit a "CALTRANS Bidder-DBE Information" form listing the DBEs participating in the contract work. In addition, for those contracts with UDBE goals, bidders will be required to submit a "CALTRANS Bidder-UDBE Commitment" form listing the UDBEs participating in the contract work. Using the information contained in these forms, resident engineers and inspectors monitor the work to ensure that the listed UDBEs perform the items of work specified at the time of bid opening and that no improper substitutions occur. If a prime contractor does not appear to be meeting the UDBE commitment, the resident engineer must provide the contractor with written notice of the apparent failure to meet the commitment. If the contractor fails to comply with the written notice, the dollar value of the proposed UDBE participation to date is withheld from the next progress estimate. In addition, resident engineers and inspectors must ensure that each UDBE and DBE is performing a commercially useful function.

UDBE Substitutions

Prime contractors must submit requests for substitution of a listed UDBE in writing to the resident engineer. The request must cite one of the seven reasons outlined in Section 5-1.086, "Performance of UDBEs," of the special provisions. The prime contractor is required to replace the listed UDBE with another certified UDBE or perform a good-faith effort to do so to the extent needed to meet the contract goal. A good-faith effort requires that the contractor address the eight information and supporting document items identified in the special provisions under "Disadvantaged Business Enterprises." The prime contractor's good-faith effort must be reviewed and approved by the district construction division

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chief before approval of a substitution request. If the prime contractor fails to conduct a good-faith effort to replace a listed UDBE with another UDBE, the substitution request must be denied.

When resident engineers receive a request for substitution, they must provide the listed UDBE with written notice of the prime contractor's request to substitute. The written notice must allow the listed UDBE at least five days to object to the substitution. If the UDBE objects and provides a timely response, the district must conduct a hearing on the substitution request. The prime contractor and UDBE must be provided with at least five days' written notice of the scheduled hearing. If the UDBE does not object to the substitution or does not respond within the five-day timeframe, the resident engineer must give the prime contractor written notice of the substitution approval. For approval of the substitution, the resident engineer must complete form CEM-2401, "Substitution Report for Underutilized Disadvantaged Business Enterprise/Disadvantaged Business Enterprise."

If the prime contractor replaces a listed UDBE without approval from the resident engineer, payment for the item(s) of work committed to the UDBE must be withheld from the next progress payment. The resident engineer must send the prime contractor written notice of the improper substitution and payment withhold. If the UDBE is also a listed subcontractor pursuant to the Subletting and Subcontracting Fair Practices Act (the Act), the substitution process must comply with Sections 4100-4113 of the Public Contract Code and Section 3-801C (5), "Hearing Process for Substitution Violations," of the Construction Manual. If found in violation of the Act, the hearing officer may also assess the prime contractor a penalty of up to 10 percent of the subcontract amount.

If the contractor's UDBE attainment meets or exceeds the contract goal, the withheld contract funds should be returned at the time the proposed final estimate is prepared. If the contractor's UDBE attainment falls short of the contract goal, only the amount of the withheld funds necessary to meet the contract goal is permanently withheld. Monies in excess of the contract goal must be returned to the contractor. Any assessed penalties are not returned.

DBE Substitutions

Under the race-neutral component of the DBE program, no separate substitution process is required if the prime contractor chooses not to use a listed DBE. However, if that DBE is a listed subcontractor pursuant to the Act, the substitution process must comply with Sections 4100-4113 of the Public Contract Code and Section 3-801C, "The Subletting and Subcontracting Fair Practices Act," of the Construction Manual. The contractor notifies the resident engineer in writing of any changes of its anticipated DBE participation before commencement of the DBE's work.

Commercially Useful Function Assessment

A DBE performs a commercially useful function when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. These responsibilities include material and supply price negotiating, installation, and payment. To make the determination, the resident engineer evaluates whether the amount that the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work. The resident engineer also evaluates the amount of work subcontracted, industry practices, and other relevant factors. Consult the district labor compliance officer for assistance in conducting an evaluation. A DBE whose role is limited to transferring funds, (a "pass-through") is not performing a commercially useful function.

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Reporting Requirements

Caltrans will require submittal of form CEM-2402(F), "Final Report—Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors," and form CEM-2403(F), "Disadvantaged Business Enterprises (DBE) Certification Status Change," on all federal-aid contracts. Caltrans will also continue to require submittal of form CEM-2404(F), "Monthly UDBE Trucking Verification," on contracts with UDBE trucking commitments.

CEM-2401, CEM 2402(F), and CEM 2404(F) have been revised. Copies of all the forms are attached to this bulletin and are available online at

http://www.dot.ca.gov/hq/construc/forms.htm

If you have questions regarding this bulletin, please contact Angela Shell, Division of Construction, at angela shell@dot.ca.gov or (916) 654-3501.

Attachments:

CEM-2401, "Substitution Report for Underutilized Disadvantaged Business Enterprise"

Disadvantaged Business Enterprise"

CEM-2402(F), "Final Report—Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors"

CEM-2403(F), "Disadvantaged Business Enterprises (DBE) Certification Status Change" CEM-2404(F), "Monthly UDBE Trucking Verification"